



## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### PART I: GENERAL INFORMATION

Requestor Name and Address:  THE CLINIC FOR SPECIAL SURGERY 900 12 <sup>TH</sup> AVENUE FORT WORTH TX 76104	MFDR Tracking #: M4-07-1353-01
	DWC Claim #:
	Injured Employee:
Respondent Name and Box #:  AMERICAN HOME ASSURANCE CO Box #: 19	Date of Injury:
	Employer Name:
	Insurance Carrier #:

### PART II: REQUESTOR'S POSITION SUMMARY AND PRINCIPAL DOCUMENTATION

**Requestor's Position Summary:** "The attached bill was not paid appropriately based upon TWCC rule 134.402 and the AAOS Global Service Data for Orthopedic Surgery."

Requestor's Letter Requesting Reconsideration states: "The date of service in question is 11/08/2005. On 02/13/2006, we received payment on this claim. However this claim should have been paid according to the new fee schedule for ASC that went into effect 09/01/2004. This claim should have been paid as follows 29898-SG \$1,063.81, 29999-59-SG \$657.06, and 29999-59-SG \$657.06, which totals \$2,377.93. You the carrier paid \$1,188.97, which leaves you due the total amount of \$1,188.96."

**Principal Documentation:**

1. DWC 60 Package
2. Medical Bill(s)
3. EOB(s)
4. Medical Records
5. Total Amount Sought - \$1,188.96

### PART III: RESPONDENT'S POSITION SUMMARY AND PRINCIPAL DOCUMENTATION

**Respondent's Position Summary:** "Requestor has not contradicted nor provided additional documentation responsive to Carrier's original response, which disputed Requestor's improper use of the -59 modifier."

**Principal Documentation:**

1. DWC 60 Package

### PART IV: SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Calculations	Amount in Dispute	Amount Due
11-8-2005	Ambulatory Surgical Care (ASC) Services for CPT code 29898-SG	$\$498.74 \times 213.3\% = \$1063.81$ , less the amount of \$531.91 previously paid by the carrier leaves an amount due of \$530.90.	\$531.91	\$531.90
	ASC Services for CPT code 29999-59-SG	$\$616.09 \times 213.3\% = \$1,314.12 \times 50\% = \$657.06$ , less the amount of \$0.00 previously paid by the carrier leaves an amount due of \$657.06	\$657.06	\$657.06
<b>Total Due:</b>				<b>\$1,188.96</b>

### PART V: FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Tex. Lab. Code Ann. §413.031 of the Texas Workers' Compensation Act, and pursuant to all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

## **Background**

1. This request for medical fee dispute resolution was received by the Division on November 2, 2006. Pursuant to Division rule at 28 TAC §133.307(g)(3), effective January 1, 2003, 27 TexReg 12282, applicable to disputes filed on or after January 1, 2003, the Division notified the requestor on November 29, 2006 to send additional documentation relevant to the fee dispute as set forth in the rule.
2. Division rule at 28 TAC §134.402, effective September 1, 2004, 27 TexReg 4223, sets out the reimbursement guidelines for ASC services.
3. Division rule at 28 TAC §134.800, effective September 1, 2004, requires ambulatory surgical centers to submit bills using the CMS-1500 billing form for ASC services.
4. Division rule at 28 TAC §134.1, effective May 16, 2002, 27 TexReg 4047, requires that services not identified in a fee guideline shall be reimbursed at fair and reasonable rates.
5. Texas Labor Code §413.011 requires that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control.
6. Division rule at 28 TAC §133.307, effective January 1, 2003, 27 TexReg 12282, applicable to disputes filed on or after January 1, 2003, sets out the procedure for medical fee dispute resolution.
7. Division rule at 28 TAC §133.304, effective July 15, 2000, 25 TexReg 2115, requires the insurance carrier to develop and consistently apply a methodology to determine fair and reasonable reimbursement.
8. The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of benefits dated 1/9/2006

- W1-Workers Compensation State Fee Schedule Adjustment.
- 42-Charges exceed our fee schedule or maximum allowable amount.

Explanation of benefits dated 4/3/2006

- W1-Workers Compensation State Fee Schedule Adjustment.
- 42-Charges exceed our fee schedule or maximum allowable amount.

## **Issues**

1. Was the respondent's response filed in the form and manner prescribed under Division rule at 28 Texas Administrative Code §133.307?
2. What is the applicable rule for reimbursement?
3. Did the requestor support the position that additional reimbursement is due for ASC services for CPT code 29898-SG and 29999-59-SG? Is the requestor entitled to additional reimbursement?

## **Findings**

1. Division rule at 28 TAC §133.307(j)(2) states "The response shall address only those denial reasons presented to the requestor prior to the date the request for medical dispute resolution was filed with the division and the other party. Responses shall not address new or additional denial reasons or defenses after the filing of an request. Any new denial reasons or defenses raised shall not be considered in the review."

Division rule at 28 TAC §133.304(c) states "At the time an insurance carrier makes payment or denies payment on a medical bill, the insurance carrier shall send, in the form and manner prescribed by the Commission, the explanation of benefits to the appropriate parties. The explanation of benefits shall include the correct payment exception codes required by the Commission's instructions, and shall provide sufficient explanation to allow the sender to understand the reason(s) for the insurance carrier's action(s)."

The respondent states in the response to the request for medical fee dispute resolution that "Requestor has not contradicted nor provided additional documentation responsive to Carrier's original response, which disputed Requestor's improper use of the -59 modifier." The Division finds that the issues of improper use of the -59 modifier were not raised by the respondent on the explanation of benefits in accordance with Division rule at 28 TAC §133.304(c). The Division further concludes that these issues were not raised by the respondent prior to the request for medical fee dispute resolution. Therefore, the response was not filed in the form and manner prescribed under Division rule at 28 TAC §133.307(j)(2), and these defenses shall not be considered in this review.

2. Division rule at 28 TAC §134.402(b) states "For coding, billing, reporting, and reimbursement of facility services covered in this rule, Texas workers' compensation system participants shall apply the Medicare program reimbursement methodologies, models, and values or weights including its coding, billing, and reporting payment policies in effect on the date a service is provided with any additions or exceptions in this section."

Division rule at 28 TAC §134.402(c) states "To determine the maximum allowable reimbursement (MAR) for a particular service, system participants shall apply the Medicare payment policies for these services and the Medicare ASC reimbursement amount multiplied by 213.3%."

Division rule at 28 TAC §134.402(d) states "In all cases, reimbursement shall be the lesser of the: 1) MAR amount regardless of billed amount; or 2) facility's and payer's workers' compensation negotiated and/or contracted amount that applies to the billed service(s)."

Division rule at 28 TAC §134.402(e)(2)(G) states "Exceptions and modification to the Medicare payment policies are as follows: 2) In addition to the ASC List of Medicare Approved Procedures, the following procedures will be reimbursed when provided in an ASC at the reimbursement rate provided by this section as if they were on that list (using the same Medicare group assignment values): G) 29999-Group 4."

3. CPT code 29898-SG is described as "Arthroscopy, ankle (tibiotalar and fibulotalar joints), surgical; debridement, extensive." The maximum reimbursement amount, under Rule §134.402, is determined by locality. Per review of Box 32 on CMS-1500, zip code 76104 is located in Tarrant County (Reasonable Charge Locality 28). Per CPT code 29898-SG is in the ASC Payment Group of 3. The Medicare rate for Group 3 in locality 28 is \$498.74. The MAR for this service is  $\$498.74 \times 213.3\% = \$1,063.81$ , less the amount previously paid by the carrier of \$531.91, leaves an amount due of \$531.90. This amount is recommended.

CPT code 29999-59-SG is described as "Unlisted procedure, arthroscopy." The requestor noted on the Table of Disputed Services that CPT code 29999-59 was for "Sinus tarsi debridement." The requestor noted in the operative report that "Two separate small incisions were created at the superomedial border of the sinus tarsi and one at the inferolateral border of the sinus tarsi. A blunt obturator was utilized to insert the instrument to the interosseous ligament. A thorough debridement of the entire sinus tarsi with the exception that the interosseous ligament was left intact..." Per the Global Service Data for Orthopaedic Surgery this procedure is not included in the service package for CPT code 29898. Therefore, the requestor is eligible for reimbursement for this procedure

The maximum reimbursement amount, under Rule §134.402, is determined by locality. Per review of Box 32 on CMS-1500, zip code 76104 is located in Tarrant County (Reasonable Charge Locality 28). Division rule at 28 TAC §134.402(e)(2)(G), states that CPT code 29999 is assigned ASC Payment Group of 4. The Medicare rate for Group 4 in locality 28 is \$616.09. The MAR for this service is  $\$616.09 \times 213.3\% = \$1,314.12$ . Since this is a secondary procedure the multiple procedures rule will be applied to the MAR.  $\$1,314.12 \times 50\% = \$657.06$ , less the amount previously paid by the carrier of \$0.00, leaves an amount due of \$657.06. This amount is recommended.

### **Conclusion**

The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation supports the reimbursement amount sought by the requestor. For the reasons stated above, the division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$1,188.96.

### **PART VI: ORDER**

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031 and §413.019 (if applicable), the Division has determined that the requestor is entitled to \$1,188.96 additional reimbursement for the services involved in this dispute. The Division hereby **ORDERS** the respondent to remit to the requestor the amount of \$1,188.96 plus applicable accrued interest per Division rule at 28 Tex. Admin. Code §134.803, due within 30 days of receipt of this Order.

**June 16, 2010**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

\_\_\_\_\_  
Date

## PART VII: YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **20** (twenty) days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. **Please include a copy of the Medical Fee Dispute Resolution Findings and Decision** together with other required information specified in Division rule at 28 Tex. Admin. Code §148.3(c).

Under Texas Labor Code § 413.0311, your appeal will be handled by a Division hearing under Title 28 Texas Administrative Code Chapter 142 rules if the total amount sought does not exceed \$2,000. If the total amount sought exceeds \$2,000, a hearing will be conducted by the State Office of Administrative Hearings under Texas Labor Code §413.031.

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**